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STATUTES AND RULES:

1.	A.R.S 13-1202	Making Threats and Intimidation
2.	A.R.S. 13-2904	Disorderly Conduct

JURISDICTIONAL STATEMENT

1. The foundational issues of this case, in which Respondent Tucson City Court Judges have unconstitutionally applied Arizona's Disturbing the Peace and Making Threats and Intimidation statutes to arbitrarily and capriciously decide who may exercise their First Amendment liberties and who must remain silent, present constitutional issues of great public significance and statewide importance¹.
2. The underlying facts which give rise to the pure issues of law presented in this Petition are not in dispute. The issues concern a denial of fundamental rights guaranteed by both the constitutions of Arizona and the United States of America.
3. The U.S. Supreme Court has stated "(t)he loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes 'irreparable injury.'" Gentala v City of Tucson 213 F.3d 1055, 1061. In this exceptional case Respondent Tucson City Court Judges, by Order of the Tucson Municipal Court, have altogether suspended Petitioner's First Amendment rights.

¹ The Arizona Supreme Court has not yet directly addressed this issue: may the subjective standards set forth by Arizona's Breach of the Peace and Making Threats and Intimidation Statutes be applied to proscribe the exercise of political rights protected by The First Amendment?

Outline of Procedural History

Date

Petitioner Holds Political Rally at the Tucson Weekly Public Forum.	3/26/2007
Petitioner Arrested and Charged.	3/31/2007
Respondent Judge Eugene Hays Finds Petitioner Guilty of 2 Counts Disorderly Conduct (A.R.S. 13-2904), 1 Count Making Threats & Intimidation (A.R.S. § 13-1202), and suspends Petitioner's First Amendment Rights.	3/24/2008
Petitioner Files Appeal in Tucson City Court.	6/30/2008
Appeal Denied in Superior Court. Remand Back to Tucson City Court.	1/06/2009
Appeal Filed in Superior Court.	1/20/2009
Notice From Court of Appeals re Apparent Lack of Jurisdiction.	2/05/2009
Respondent Judge Mitchell Eisenberg Imposes Sentence Suspending Petitioner's First Amendment Rights.	3/16/2009
Appellate Court Mandate to Superior Court	3/30/2009

4. Petitioner, who was convicted in Tucson Municipal Court, asserts he has no equally plain, speedy and adequate remedy by appeal, as per A.R.S. 22-375.
5. "A judgment entered on remand after an appellate court opinion and mandate is not reviewable by appeal but rather by special action." Arizona Appellate Handbook, Chapter 7.2.2 citing Scates v Arizona Corp. Comm'n, 124 Ariz. 73.

1 6. Regarding constitutional challenges and the Court's discretion to deny

2 Petitioner a hearing by Special Action: In Dream Palace v. County of

3 Maricopa, 384 F.3d 990, 1006-1008 (9th Cir 2004) the Court stated:

4 "Were this discretion unbounded, the special action would, or
5 course, provide no guarantee of judicial review on the merits. If,
6 on the other hand, the judge's 'discretion' does not include the
7 ability to dismiss a petition where it is the only route by which the
8 petitioner can bring a constitutional challenge, then the mere use
9 of the term 'discretion' will not prevent the review from being
10 constitutionally sufficient." Dream Palace at 1006.

11
12 7. Furthermore; the Court cited Justice Holmes: "(I)t is plain that a State

13 cannot escape its constitutional obligations by the simple device of

14 denying jurisdiction in such cases to Courts otherwise competent."

15 Dream Palace at 1006.

16 8. And finally: "(T)he Arizona Supreme Court has held that 'appellate

17 courts must engage in independent review of 'constitutional facts' in

18 order to safeguard first amendment protections." Dream Palace at 1008

19 citing Dombey v Phoenix Newspapers, Inc., 150 Ariz. 476, 482.

20 9. Petitioner herein alleges: (1) Respondent Tucson City Court Judges

21 have arbitrarily and capriciously abused their discretion or exceeded

22 their legal authority to deny Petitioner fundamental rights protected by

23 the Constitutions of the State of Arizona and the United States, (2)

24 Petitioner has no equally plain, speedy and adequate remedy by appeal,

1 as set forth above, and (3) the extraordinary political ramifications of
2 this case, Petitioner's previous Title 42 §1983 federal suit against Pima
3 County Superior Court Judges and Petitioner's frequent excoriation of
4 specific Pima County Superior Court Judges during public rallies and
5 within his publications Common Sense II and CSII Press, reasonably
6 preclude Petitioner from presenting the following issues to the Pima
7 County Superior Court, where judges may feel obliged to recuse
8 themselves for bias.

9 **STATEMENT OF THE ISSUES**

10 **I. DID RESPONDENT JUDGE EISENBERG EXCEED HIS**
11 **JURISDICTION OR LEGAL AUTHORITY WHEN HE**
12 **ISSUED A SENTENCING ORDER WHICH PREVENTS**
13 **PETITIONER FROM "SPEAK(ING) WITHIN 1,000 FEET**
14 **OF ANY PUBLIC DEMONSTRATION?"**

15
16 **II. WAS RESPONDENT JUDGE HAYS' REFUSAL TO ALLOW**
17 **TESTIMONY REGARDING TUCSON POLICE DEPART-**
18 **MENT AND TUCSON CITY POLICY WHICH ENCOUR-**
19 **AGES "PRO-RAZA, OPEN BORDER" ACTIVISTS TO**
20 **COMMIT VIOLENT ACTS OR OTHERWISE DISRUPT**
21 **THE POLITICAL ACTIVITIES OF "ANT-RAZA CLOSE**
22 **BORDER" ACTIVISTS ARBITRARY, CAPRICIOUS OR AN**
23 **ABUSE OF DISCRETION ESPECIALLY SINCE HE**
24 **GRANTED PETITIONER'S REQUEST FOR A 60 DAY**
25 **CONTINUANCE TO ESTABLISH THE EXISTENCE OF**
26 **SUCH POLICY?**

27
28 **III. WAS RESPONDENT JUDGE HAYS' FINDING PETI-**
29 **TIONER WAS GUILTY OF BREACH OF THE PEACE AND**
30 **MAKING THREATS AND INTIMIDATION ARBITRARY,**
31 **CAPRICIOUS OR AN ABUSE OF DISCRETION WHEN (A)**

1 PETITIONER'S ALLEGED BREACH OCCURRED SUB-
2 SEQUENT TO THE PEACE BEING BREACHED BY
3 COUNTER PROTESTORS, (B) PETITIONER'S ALLEGED
4 THREATS WERE MADE UNDER DURESS², (C) PETI-
5 TIONER'S CHALLENGED SPEECH FAILED TO MEET
6 THE STANDARDS FOR FIGHTING WORDS AND
7 THREATS SET FORTH BY THE ARIZONA SUPREME
8 COURT IN CITIZEN³, AND (D) TUCSON POLICE INTEN-
9 TIONALLY FAILED TO PROTECT PETITIONER WHILE
10 HE ENGAGED IN PUBLIC SPEECH, VIOLATING A DUTY
11 SET FORTH BY THE UNITED STATES SUPREME
12 COURT?

13 PROCEDURAL HISTORY

14
15
16 10. On March 31, 2007 Petitioner was arrested five days subsequent to
17 conducting a political rally on March 26, 2007 at the Tucson Weekly
18 Public Forum⁴ and charged in Tucson City Court with three counts of
19 Disorderly Conduct (A.R.S. 13-2904), one count of Making Threats and
20 Intimidation (A.R.S. 13-1202), and one count of Unlawful Assembly.

21 11. On November 15, 2007 Petitioner's attorney filed a Motion to Continue
22 Trial on the basis of an apparent change in Tucson Police Department

² Alleged criminal threats "... (must also) not be the result of mistake, *duress, or coercion*." In Re Kyle M, 200 Ariz 447 (App.)

³ Citizen Publishing Co. v Miller, 210 Ariz. 513. See pages 518-521 for analysis.

⁴ The Tucson Weekly Public Forum is a free speech forum conducted by Petitioner on public property located at the Joel Valdez Library near the corner of Pennington and Stone, Tucson Arizona.

1 (TPD) policy regarding how the police respond to political demon-
2 strations, an issue crucial to the defense, which Respondent Judge Hays
3 denied.

4 12. On December 14, 2007, the day trial was originally set to commence,
5 Petitioner vigorously argued his need to interview additional TPD
6 officers regarding their apparent change in policy which presently
7 permits or encourages “Pro-Raza Open Border” activists to commit acts
8 of violence and otherwise disrupt Petitioner’s political rallies, forcing
9 Petitioner to engage in defensive gestures and issue stern words of
10 warning in self defense.

11 13. Subsequently; Judge Hays granted Petitioner an additional 60 days to
12 conduct interviews which did in fact reveal said change in policy⁵ on
13 November 01, 2007.

14 14. On the opening day of trial, March 24, 2008, Respondent Judge Hays
15 (1) denied Petitioner the right to introduce testimony and evidence

⁵ On November 01, 2007 TPD began lawfully employing a sound device to measure the decibel levels of Petitioner’s speech. Additionally, TPD officers Armand and Pedrego took minimal steps to protect public safety at Petitioner’s rally in front of the Mexican Consulate, thus preventing the same type of violent outbreak that occurred on March 26, 2007 which required Petitioner to engage in defensive gestures and issue stern words of warning.

1 regarding TPD policy which was the sole purpose of the 60 day
2 continuance granted on December 14, 2007, and (2) found Petitioner
3 guilty of two counts of Disorderly Conduct and one count of Making
4 Threats and Intimidation With Injury or Damage to Property, even
5 though the state presented no testimony or evidence regarding any
6 alleged damage to person or property.

7 15. On March 26, 2008 Respondent Tucson Municipal Court Judge Eisen-
8 berg granted Petitioner's fourth Rule 10.1 Motion for Change of Judge
9 (Hays) for Cause in CR 8013622 and CR 8017674, new actions now
10 pending in Tucson Municipal Court which arise out of Petitioner's
11 political activities.

12 **STATEMENT OF FACTS**

13 16. On December 14, 2007, the date trial was originally set to begin, Judge
14 Hays granted Petitioner a 60 day continuance after hearing oral argu-
15 ment from Petitioner and Petitioner's counsel which outlined their need
16 to interview TPD officers and gather evidence regarding an apparent
17 change in TPD policy, which presently permits or encourages "Pro-
18 Raza Open Border" activists to commit violent acts or otherwise disrupt
19 "Anti-Raza Close Border" political rallies. Please review Petitioner's
20 Motion to Expand Record.

1 17. Nevertheless; at trial Judge Hays prevented testimony from various
2 Tucson Police Department (TPD) officers, including Officers Armand
3 & Pedrego, Lieutenant Anemone, Captain Timpf, Assistant Chief
4 Robinson, etc., regarding long-standing TPD, Tucson City and Pima
5 County Policy which presently encourages or permits “Pro-Raza Open
6 Border” activists to curse, issue death threats, knock police officers to
7 the ground, throw frozen water bottles, ball bearings and other objects⁶,
8 destroy property, knock over barriers designed to protect public safety,
9 spit upon and otherwise commit acts of violence at rallies conducted by
10 Petitioner and other “Anti-Raza Close Border” activists, thus requiring
11 Petitioner to engage in defensive gestures and issue stern words of
12 conditional warning in order to protect his own safety and maintain
13 public order. (RT 7:20-9:17; 14:7-18:1)

14 18. Regarding TPD and Tucson City Policy as set forth above; Judge Hays
15 additionally limited or prevented testimony from a series of defense
16 witnesses including (1) TPD Captain Mike Gillooly who, along with
17 TPD Chief Richard Miranda and City Attorney Mike Rankin, had
18 written a definitive document entitled “After Action Report Nationwide
19 Day of Protest March and Rally” dated May 08, 2006 which

⁶ As described in the TPD After Action Report dated May 08, 2006.

1 substantiates the existence of such policy (RT 204:22-209:19), (2)
2 Kathy McKee, an “Anti-Raza Close Border” activist (and Quaker) who
3 endured similar violence at a rally she attended in 2004 in which the
4 TPD failed to protect the “Anti-Raza Close Border” protestors from
5 spitting, cursing and other violence offered by “Pro-Raza Open Border”
6 activists two years prior to Petitioner’s commencement of rallies in
7 2006 (RT 196:23-197:21; see Affidavit of Kathy McKee, Exhibit One),
8 (3) Manny Enriquez, Victor Walker and Laura Leighton, all of whom
9 witnessed TPD refuse to protect “Anti-Raza Close Border” protestors
10 from violence offered by “Pro-Raza Open Border” activists (RT:
11 197:27-203:18), and (4) Petitioner. (RT 222:11-223:16)

12 **State Witnesses**

13 19. State witness Beth Tradico, Principal of the Calli Olin Academy, (COA)
14 testified that (1) the left wing Pro-Raza group “Chicanos Por La Causa”
15 (CPLC) was the “charter holder” for the COA (RT 29:16-22), (2) that
16 CPLC helped to devise the curriculum for the COA (RT 29:23-31:2),
17 (3) that COA students believed in the concept of the Nation of Aztlan

1 and indigenous people who do not recognize borders (RT 40:14-24),
2 and (4) that MEChA⁷ is an active club at the COA. (RT 41:2-6)

3 20. Beth Tradico testified that prior to the incidents which occurred on
4 March 26, 2007 at Petitioner's rally which are the basis for Petitioner's
5 conviction and this Special Action, both she and the teachers found the
6 content of Petitioner's speech, which dealt "aggressively... with issues
7 of illegal entry," was "very offensive both to the teachers and to the
8 students," and, both she and the teachers were concerned the students
9 would react violently to the content of Petitioner's speech even before
10 the students attended Petitioner's rally on March 26, 2007. (RT 35:21-
11 37:15)

12 21. At the rally Beth Tradico observed students become very angry, swear
13 at and threaten Petitioner, and say: "He's an asshole. He shouldn't be
14 allowed to speak like that." (RT 47:19-48:18)

15 22. Beth Tradico testified that during the rally TPD officers stood idly by
16 and refused to protect Petitioner or maintain order while students and
17 other "Pro-Raza Open Border" activists spit upon, threatened and other-
18 wise assaulted Petitioner. (RT 41:7-43:3; 48:6-18)

⁷ MEChA, a radical "Pro-Raza" student organization, actively promotes the establishment of Aztlan in the American southwest.

1 23. Even though Beth Tradico observed one of her students spit at or spit
2 upon Petitioner (RT 44:5-23), no Tucson Police Officer ever came to
3 the COA to investigate whether a student had assaulted Petitioner. (RT
4 45:10-46:2)

5 24. Beth Tradico testified that a former COA student, Ernesto Rendon, stole
6 an American Flag from the Tucson Public Works Building, brought it to
7 Petitioner's rally, and "put the flag on the ground in anger in response to
8 what Mr. Warden was saying." (RT 46:3-47:5)

9 25. Beth Tradico testified the students refused her request they leave the
10 rally. (RT 39:13-40:5)

11 26. State witness TPD Officer Cuffe testified (1) "it was... the message," or
12 political content of Petitioner's speech that rally observers and office
13 workers complained about (RT 54:25-55:6; 56:5-57:4), and (2) that
14 people came up to him and said: "Stuff like this shouldn't be allowed to
15 happen. I don't like this message." (RT 68:19-23)

16 27. Officer Cuffe testified he greatly feared violence from "Pro-Raza Open
17 Border" activists (RT 66:10-67:12) who became enraged by the political
18 content of Petitioner's speech. (RT 68:15-23; 75:25-76:24; 87:9-88:9)

19 28. Officer Cuffe testified that (1) the nature of Petitioner's rally changed
20 after the arrival of "a very large group of high school kids" (RT 58:12-

1 17), (2) students “encircled” Petitioner’s roped off area and things got
2 “tense” (RT 63:5-11), and (3) Petitioner’s rally was “lawful” until the
3 high school kids came over to where Petitioner was speaking. (RT 77:7-
4 15)

5 29. Officer Cuffe testified that as Petitioner’s gave his political message:

6 “Illegal aliens, You’re not welcome here...we have policies, we have
7 federal laws. You’re not allowed to be here” (RT 66:2-9), Petitioner
8 responded to crowd’s angry reaction to his political message by
9 repeating: “If I have to protect myself, I will.” (RT 65:6-12; 76:25-77:6)

10 30. Officer Cuffe testified that “collectively” TPD officers decided not to
11 protect Petitioner even though an angry crowd was spitting on him. (RT
12 78:1-79:5) Officer Cuffe testified Petitioner was “disruptive” because he
13 kept repeating his political message. (RT 75:25-76:24)

14 31. State witness Officer Douglas observed (1) several “Pro-Raza Open
15 Border” activists “flashing” racist gang signs like “Brown Pride” (RT
16 103:7-104:8) and (2) some had their fists wrapped up with cloth “...like
17 a boxing glove type of thing, just to tighten up your fist so that you can
18 hit somebody.” (RT 101:23-102:4)

19 32. State witness Officer Jaeger observed TPD Sergeant Trainer speak to
20 four Hispanic males who had confronted Petitioner and kicked over a

1 sign pole. (RT 147:4-11) These males left and then at least two of them
2 returned with the much larger group of students which again confronted
3 Petitioner. (RT 109:1-24; 147: 4-15)

4 33. Officer Jaeger testified that he wrote in his report Petitioner warned the
5 counter-demonstrators: if you enter the roped off area, Petitioner would
6 (1) "... take it as a threat upon him and he'd use whatever force was
7 necessary to defend himself" (RT: 110:18-24), and (2) that Petitioner
8 warned he would "take the act of anyone entering his (roped off) area as
9 a threat against his life and he would use his stun gun or his firearm...to
10 defend himself." (RT 111:23-112: 5)

11 34. Officer Jaeger testified that (1) Petitioner was in danger once the crowd
12 encircled him (RT 114:22-115:14), (2) that Petitioner "...looked at me
13 and asked me for help...to make sure that he's safe, that the crowd
14 doesn't come in here (the roped off area)...help from the people who
15 were yelling at him" (RT 113:12-114:2), and (3) agreed Petitioner had
16 begged for assistance from TPD. (RT 116:15-117:9)

17 35. State witnesses Officer Douglas and Detective Reed testified it was the
18 political content of Petitioner's speech that angered the crowd. (RT
19 105:9-12; 119:11-120:4; 121:3-20)

1 36. Detective Reed succinctly described how Petitioner's rally "transi-
2 tioned" from a peaceful rally to one that was not (inferentially) because
3 TPD did not maintain order:

4 "By the time I arrived the crowd had already been established. At
5 the beginning it was a demonstration and then at one point that
6 stopped. There was no longer any demonstrating going on. There
7 was no political speech. What happened is it transitioned: at the
8 point that I arrived there was some discussion reference a message
9 that Mr. Warden had referenced illegal immigration and then that
10 completely ceased and it turned into a bantering session between
11 Mr. Warden, Mr. Dove and the crowd." (RT 125: 4-13)

12
13 37. Several state witnesses, including Beth Tradico and Tucson Police
14 officers, confirmed Petitioner's alleged "threats" were actually words of
15 self defense and words of conditional warning. (RT 21:19-25; 37:16-20;
16 77:4-6; 110:16-24; 111:23-112:5)

17 38. State witness TPD Lieutenant Coleman testified Petitioner's roped off
18 area helped to separate demonstrators and protect the peace. (RT 144:2-
19 145:6)

20 39. Lieutenant Coleman, who admitted Petitioner was assaulted by spit on
21 March 26, 2007 (RT 176:14-22), refused to respond to crowd violence
22 because TPD action to preserve order might "incite" a violent crowd of
23 "Pro-Raza Open Border" activists to commit acts of even greater vio-
24 lence. (RT 153:13-154:14; 162:24-163:12; 166:20-168:5)

1 40. Lt. Coleman testified that, subsequent to the rally, three “Pro-Raza
2 Open Border” activists were arrested for spitting and other acts. (RT
3 154: 17-22)

4 41. Under threat of arrest for Disorderly Conduct Petitioner stopped his pro-
5 test when Lt. Coleman, without employing a device to measure decibel
6 levels, issued him a citation for civil noise violation. (RT 157:13-
7 158:16; 168:6-170:24)

8 42. Lt. Coleman testified he felt safe in citing Petitioner for noise violations
9 but did not cite any of the “Pro-Raza Open Border” activists because he
10 feared other “Pro-Raza Open Border” activists would respond violently.
11 (RT 167:3-168:5)

12 43. Lt. Coleman testified that (1) he told Petitioner he would arrest him for
13 Disorderly Conduct if he did not cease using the sound amplification
14 system “because that conduct needed to stop at that time” (RT 168:18-
15 169:20), that (2) Petitioner complied with Lt. Coleman’s instructions
16 (RT 170: 16-24), that (3) Petitioner was charged with Disorderly Con-
17 duct for the comments he made at the end of his rally as he was pre-
18 paring to depart (RT 169: 21-170:14), and that (4) the Prosecutor, not
19 he, decided to have Petitioner arrested. (RT 169:21-170:14)

1 44. Regarding the escalating violence which transpired subsequent to
2 Petitioner taking down his roped barrier, thus inspiring Petitioner's
3 alleged comments to Lt. Coleman which formed the basis of the State's
4 charges against Petitioner, Officer Cuffe testified that (1) the tenseness
5 "peaked" as Petitioner was loading up his car (RT 69:13-22), (2) the
6 angry crowd advanced right up to the police line "probably a foot in
7 front of my face" (RT 70:23-71:4), (3) the crowd was "...very loud,
8 screaming, cussing and Mr. Warden was doing the same right back to
9 them" (RT 71: 7-8), and, that (4) Petitioner said something to the crowd
10 like "...maybe I need to pull my gun out and use deadly force against
11 you." (RT 71:20-22)

12 45. TPD Officers Cuffe and Douglas testified the crowd became more
13 violent and advanced upon Petitioner when he took down his protective
14 barrier. (RT 70:6-72:14; 86:23-87:1; 88:10-22; 93:10-18; 101:8-102:12;
15 159:13-160:20)

16 46. Lt. Coleman testified that during the last exchange, which formed the
17 basis for Petitioner's arrest for Disorderly Conduct and Making Threats
18 and Intimidation, Petitioner (1) "...said to me, you better keep these
19 animals back...what are you going to do if I start shooting? Do you
20 think that's funny?" (RT 161:8-23), and (2) even though he viewed a

1 KVOA channel 4 News video which showed the entire incident, in-
2 cluding Petitioner's alleged criminal conduct which was the basis for
3 the Disorderly Conduct charge, the Prosecutor did not issue a subpoena
4 to obtain it. (RT 175:4-19)

5 47. Lt. Coleman testified that Petitioner was assaulted during the rally on
6 March 26, 2007 but he was not able to tell if Petitioner was in breach of
7 the peace before or after he was assaulted. (RT 176: 14-23)

8 **Petitioner's Testimony**

9 48. Petitioner testified as to his background and expertise (1) as a political
10 activist, private investigator, legal researcher, etc., (RT 211:16-212:2),
11 (2) his first hand knowledge of "constitutional issues, the rights of
12 political protest, the civil rights movement..." (RT 211:16-21) and
13 tactics employed by the FBI and local police⁸ to disrupt disfavored
14 political groups (RT 212:3-15), (3) his observations that TPD presently
15 uses the same tactics to stop "Anti-Raza Close Border" activists that
16 racist southern police departments employed in the 1950's and 1960's to
17 stop civil rights activists (RT 214:22-216:4; 242:25-244:22), (4) that
18 many people "were very much afraid to go to any political rally in

⁸ CoIntelPro operated nationwide between 1955 and 1972.

1 opposition to Tucson City Policy because they feared violence, they
2 feared violence from the police...that the police would allow ‘Pro-Raza
3 Open Border’ people to physically attack them, to spit on them, to curse
4 at them and physically attack them...” (RT 220:14-23) and (5) his
5 observation that:

6 “...in many, many places the police, basically, take their political
7 directions from the politicians who run the municipality...police
8 authorities were always directed by the politicians to commit acts
9 of violence and other acts against pro-civil rights protestors in an
10 effort to silence their opposition to a local policy...these people
11 were continually arrested for unlawful assembly...for making
12 threats and intimidation when they issued words of warning trying
13 to protect themselves...they were arrested for all the things I’ve
14 been arrested for... and this was part of a policy that was in place
15 for a number of years in the south in order to dissuade anyone from
16 speaking out in favor of civil rights.” (RT 215:12-24)

17
18 49. Petitioner introduced a DVD recording of events that occurred on May
19 06, 2006 in Kennedy Park, Tucson Arizona, when Assistant Chief
20 Robinson, Officer Portillo and Lt. Anemone assisted, and later con-
21 gratulated,⁹ a group of “Pro-Raza Open Border” activists after their
22 successful assault on Petitioner, which did interrupt his rally and did
23 prevent the Burning of the Mexican Flag. (RT 223:4-224:23; 227:10-

⁹ See Exhibit Two and Motion to Expand Record for partial, non-certified transcript of conversations between TPD Officers and Open Border Advocates in Kennedy Park on May 06, 2006.

1 228:25; 237:23-238:16) Exhibit Two. Please review Petitioner's Motion
2 to Expand Record.

3 50. Petitioner, who introduced testimony from a firearm expert (RT 183:14-
4 187:21), stated his belief that his firearm was "of no practical protection
5 at all from the standpoint of having to use it" (RT 229:4-25; 235:23-
6 236:12) and testified he even offered to give police his ammo clip prior
7 to each demonstration. (RT 234:3-15)

8 51. Regarding the firearm, Petitioner testified:

9 "(T)he only protection it affords is the fact that in their ("Pro-Raza
10 Open Border" Demonstrators) minds they may believe that I intend
11 to use it in self protection. To the extent I convince them I am
12 prepared to use it in self protection, I believe, may (be) the only
13 thing that stops them from rushing me en masse as they did the
14 police in Armory Park on April 10, 2006." (RT 229:19-25)

15
16 52. Petitioner testified that (1) the police had no incentive to protect him if
17 he was not prepared to use deadly force to protect himself (RT 230:5-
18 12), (2) the police "would allow incredible violence to be visited upon
19 me because they would not fear a deadly response" (RT 248:25-
20 249:14), (3) some police officers were even "amused" by his fear (RT
21 237:4-22), "they actually smiled...they think it's funny..." (RT 237:19-
22 22), and (4) he was:

23 "...frightened for my life...I'm really frightened...I'm between a
24 rock and a hard place...I know the police have a duty to protect
25 me...I'm not going to back down...so where do I go with this? If I

1 feel my life is in danger, should I do what Kathy McKee and the
2 other people do, simply refuse to demonstrate and speak because
3 the police are going to allow violence to be perpetrated on me or
4 am I going to in some fashion speak and protect myself?" (RT:
5 239:21-240:15)

6
7 53. Petitioner testified his DVD recording device, which is directed at Peti-
8 tioner, picks up his voice amplified by the loud-speaker but fails to pick
9 up the crowd's provocative statements, including "we've got guns and
10 we're going to take this country over...the Mexican army is going to
11 come...we're going to start a revolution...we're going to kill you
12 people and drive you back to Plymouth Rock...¹⁰," (RT 230:13-231:7;
13 245:13-246:13), also revealed numerous threats against his life. (RT
14 232:6-233:15)

15 54. Regarding Petitioner's statement to "Pro-Raza Open Border" counter
16 protestors, "go get your guns boys," Petitioner testified:

17 "It's a response. Go get your Mexican Army, go get your guns, go
18 get it started...you've said you're going to start a revolution...go
19 get your guns, organize your revolution, come at us and we
20 Americans will resist you. We'll stop you!" (RT 236:15-24)

21
22 55. Petitioner further testified his alleged "threats" were actually
23 conditional warnings intended (1) to deter violence and protect public

¹⁰ Also unrecorded was the following statement from "Open Border" protestors: "Step out of there you Pussy White Faggot and we'll take care of you!" Sgt. Trainor, Page 2 TPD Incident Report 0703260414 dated March 27, 2007.

1 safety (RT 235:19-236:12; 239:16-21; 249:15-250:7) and (2) to inform
2 the police they needed to move in and restore order. (RT 237: 4-22;
3 249:2-14)

4 56. Petitioner testified occasionally he achieved his goal of peaceful dialog
5 with students on immigration issues. (RT 234:19-235:9)

6 57. Prior to sentencing, Petitioner apprised Judge Hays of the ruling of the
7 U.S. Supreme Court in Terminiello v Chicago, 69 S.Ct. 894 (1949)
8 which, from a practical viewpoint, precludes the use of Disturbing the
9 Peace statutes to prevent the lawful exercise of free speech, that “(o)nce
10 somebody’s engaged in constitutionally protected speech, everybody’s
11 offended by opinions which they do not like,” and furthermore...

12 “...the police have an affirmative duty to step in and protect the
13 right of the speaker. They have to do that against the hostile crowd
14 or what they call a heckler’s veto. In other words, we can’t let them
15 (a violent crowd) create conditions of unrest to the point where the
16 police can then move in and stop the right of the public speaker.
17 They’re (the U.S. Supreme Court) very, very explicit about this.”
18 (RT 274:5-275:21)

19
20 58. Regarding the Prosecutor’s question as to whether or not TPD stopped
21 Petitioner’s political speech on March 26, 2007, Petitioner testified:

22 “Yes they did...once the spitting started my speech ended and the
23 rest of it became defensive words. They effectively (stopped my)
24 speech communication when they allowed these people to assault
25 me and spit on me and shower me with death threats and spit. Yes,
26 they did stop my speech on that day.” (RT 247:1-9)
27

1 **Judge Hays' Sentencing Comments**

2 59. Regarding the offenses of Disorderly Conduct and Making Threats and
3 Intimidation, Judge Hays miscited the context of Petitioner's use of
4 serious defensive words by stating, "(t)he statute talks about you have to
5 confront non-deadly force with non-deadly force. Somebody spits on
6 you, you can't threaten to blow his head off" (RT 269 7-15) even
7 though several state witnesses (RT 110:16-24; 111:23-112:5) and Peti-
8 tioner, (a thorough review of the film record of the entire incident
9 introduced at trial reveals), never "threatened to blow the head off" of
10 anyone for the act of spitting upon him.

11 60. Moreover; Petitioner clearly provided the proper context when he stated
12 his words were "(s)imply self-defensive statements, saying, look, **if** you
13 actually come at me, **if** you jump me, **if** you try to do what you did to
14 the police in Armory Park, land on my back and (knock) me to the
15 ground, I won't take that type of physical assault." (RT 235:23-236:12)

16 61. Regarding the issues presented in this appeal, Judge Hays furthermore
17 stated:

18 "When you say that to a crowd like that of people that you know
19 are hostile, is offensive abusive and liable to cause immediate
20 retaliation. I've got you quoted, one says something about drinking

1 your mother's milk¹¹. You constantly refer to these teenagers as
2 children which is offensive to them and some of those boys you
3 know that it was likely to create immediate physical retaliation.
4 And, in fact, it did. You got spit upon and the officers literally had
5 to guard you and protect you till you got to the door of your car to
6 leave. (RT 271:11-22)

7
8 "There was other things...being said that you did not say, but I had
9 to take it into context and if they decided—Russell, for some of the
10 things he said...what he said was stated in such a way that was
11 likely to provoke people to immediate physical retaliation...I can't
12 hold you for what Russell said, but when I put it in the whole
13 context, then it aggravates everything that you're saying." (RT
14 270:22-271:6)

15
16 "I find that, the part of the statute that says uses, engages in fighting
17 or violent or seriously disruptive behavior, I didn't see you fight,
18 but your behavior was certainly violent, flashing that Taser around,
19 slapping your hip and it was clearly seriously disruptive. So I've
20 got to find you guilty of both, two out of the three counts of
21 disorderly conduct." (RT: 271:23-272:4)

22
23 "Now, the law in the state of Arizona is there's no such thing as
24 fighting words. Something said, is not a defense to an assault, but
25 the flipside of that is we try to keep the peace by ensuring that
26 people don't use those kinds of words that are likely to lead people
27 to, reasonably expected to lead to physical violence. (RT 281:10-
28 15)

29
30 "I'm not going to order that you not be at any public demon-
31 strations. However, I will order you not to speak at any public
32 demonstration because it seems to be your mouth that's getting you
33 into trouble." (RT 281:20-23)

¹¹ Public Speaker Russell Dove may have referred to the violent "Open Border" advocates as "children who still need their mother's milk," but a review of the DVD recording reveals Petitioner never did.

ARGUMENT

I. DID JUDGE EISENBERG EXCEED HIS JURISDICTION OR LEGAL AUTHORITY WHEN HE ISSUED A SENTENCING ORDER WHICH PREVENTS PETITIONER FROM “SPEAK-(ING) WITHIN 1,000 FEET OF ANY PUBLIC DEMONSTRATION?”

62. “Any system of prior restraint of expression comes to this Court bearing a heavy presumption against its constitutional validity.” New York Times Company v United States, 91 S.Ct. 2140, 2141 (1971).

“The amendments (Bill of Rights) were offered to curtail and restrict the general powers granted to the Executive, Legislative, and Judicial Branches...(t)he Bill of Rights changed the original Constitution into a new charter under which no branch of government could abridge the people’s freedoms of press, speech religion, and assembly.” New York Times at 2142.

63. Regarding the First Amendment and Prior Restraint:

“The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.” New York Times at 2144, citing De Jonge v Oregon, 57 S.Ct. 255, 260.

1 64. The U. S. Supreme Court has stated: “even a momentary lapse in funda-
2 mental freedom results in ‘irreparable harm.’” Gentala v City of Tucson,
3 213 F.3d 1061. (Internal citations omitted.)

4 65. In this exceptional case Respondent Tucson City Court Judges, by Order
5 of the Tucson Municipal Court, have altogether suspended Petitioner’s
6 First Amendment rights. A diligent search of the appropriate case law set
7 forth by the Arizona Supreme Court, the Ninth Circuit Court of Appeals
8 and the United States Supreme Court fails to reveal any case in which by
9 Order of the Court a citizen has been denied his rights to assembly and
10 political speech on the public square.

11 66. As set forth in New York Times cited above, Petitioner submits: Respon-
12 dent Tucson City Court Judges lack the subject matter jurisdiction to
13 issue an Order of the Court to prevent Petitioner, or any citizen, from
14 “speak(ing) within 1,000 feet of any public demonstration.”

15 **II. WAS RESPONDENT JUDGE HAYS’ REFUSAL TO ALLOW**
16 **TESTIMONY REGARDING TUCSON POLICE DEPART-**
17 **MENT AND TUCSON CITY POLICY WHICH ENCOUR-**
18 **AGES “PRO-RAZA OPEN BORDER” ACTIVISTS TO COM-**
19 **MIT VIOLENT ACTS OR OTHERWISE DISRUPT THE**
20 **POLITICAL ACTIVITIES OF “ANTI-RAZA CLOSE BOR-**
21 **DER” ACTIVISTS ARBITRARY, CAPRICIOUS OR AN**
22 **ABUSE OF DISCRETION ESPECIALLY SINCE HE**
23 **GRANTED PETITIONER’S REQUEST FOR A 60 DAY CON-**
24 **TINUANCE TO ESTABLISH THE EXISTENCE OF SUCH**
25 **POLICY?**
26

1 67. “If the police condone activities by private parties that they know to be
2 illegal there ‘exists sufficient evidence of a conspiracy between the
3 private parties and the officer to foreclose summary judgment.’” Sodal
4 v Cook County, 506 U.S. 65, 113 S.Ct. 538.

5 68. Regarding Petitioner’s defense: Judge Hays acknowledged the signi-
6 ficance of TPD policy, which encourages “Pro-Raza Open Border”
7 activists to attack participants in “Close Border” rallies, when he
8 granted Defendant an additional 60 days to interview police officials
9 regarding said policy on December 14, 2007. See Petitioner’s Motion
10 to Expand Record.

11 69. In the instant case, Judge Hays prevented Petitioner from presenting
12 significant evidence crucial to his defense, including the testimony of
13 Tucson Police Officers, to prove the existence of a concert of action
14 between Tucson Police Officials and radical “Pro-Raza Open Border”
15 activists with the intent of stopping Petitioner from the exercise of
16 rights protected by the First Amendment. (S.O.F. 9:14-10:2; 11:1-
17 12:11) See Petitioner’s Motion to Expand Record.

18 70. Defendant, who in the interests of judicial economy prefers not to cite
19 black letter, boiler plate law, herein submits: Respondent Judge Hays’
20 refusal to allow the introduction of testimony from crucial witnesses,

1 who would have established TPD policy which presently encourages
2 counter-protestors to disrupt Petitioner's rallies, was "'fundamental
3 error,' (or)...such error as goes to the foundation of the case, or which
4 takes from defendant a right fundamental to his defense." State v
5 Gamble, 111 Ariz. 25, 26 (1974).

6 **III. WAS RESPONDENT JUDGE HAYS' FINDING PETI-**
7 **TIONER WAS GUILTY OF BREACH OF THE PEACE**
8 **AND MAKING THREATS AND INTIMIDATION ARBI-**
9 **TRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION**
10 **WHEN (A) PETITIONER'S ALLEGED BREACH**
11 **OCCURRED SUBSEQUENT TO THE PEACE BEING**
12 **BREACHED BY COUNTER PROTESTORS, (B) PETI-**
13 **TIONER'S ALLEGED THREATS WERE MADE UNDER**
14 **DURESS¹², (C) PETITIONER'S CHALLENGED SPEECH**
15 **FAILED TO MEET THE STANDARDS FOR FIGHTING**
16 **WORDS AND THREATS SET FORTH BY THE ARIZONA**
17 **SUPREME COURT IN CITIZEN¹³, AND (D) TUCSON**
18 **POLICE INTENTIONALLY FAILED TO PROTECT**
19 **PETITIONER WHILE HE ENGAGED IN PUBLIC**
20 **SPEECH, VIOLATING A DUTY SET FORTH BY THE**
21 **UNITED STATES SUPREME COURT?**

22
23 **A. PETITIONER'S ALLEGED BREACH OCCURRED SUB-**
24 **SEQUENT TO THE PEACE BEING BREACHED BY**
25 **COUNTER-PROTESTORS.**
26

¹² Alleged criminal threats "... (must also) not be the result of mistake, *duress, or coercion*." In Re Kyle M, 200 Ariz 447 (App). (Emphasis added.)

¹³ Citizen Publishing Co. v Miller, 210 Ariz. 513. See pages 518-521 for analysis.

1 “To charge that peace of individual is willfully disturbed is
2 equivalent to charging that individual is within the peace; person
3 not in the peace could be further provoked, but unless he is in
4 repose of mind and peaceful intent his peace cannot be disturbed.”
5 Matter of Appeal in Maricopa County, 184 Ariz. 473, 474 (App).

6
7 “(A) conviction for disorderly conduct could not stand when the
8 evidence did not show that the victim whose peace was alleged to
9 have been disturbed was in fact ‘within the peace’ when the
10 disorderly act occurred.” State v Cutright, 196 Ariz. 567, 568
11 (App).

12
13 71. In Cutright, where the Defendant’s actual discharge of a firearm was
14 one of the elements of his alleged breach of the peace, the Court stated:

15 “(b)y interpreting disorderly conduct to include the requirement
16 that the individual victim be in repose before the conduct
17 occurs...the prosecution must show the individual was in repose
18 before the conduct commenced.” Cutright, 571-572.

19
20 72. Since the state did not allege otherwise, Petitioner was (presumably)
21 convicted for disturbing the peace of a neighborhood.

22 73. In the instant case, Lt. Coleman testified that Petitioner’s alleged dis-
23 orderly act occurred after he had taken down his roped barrier as he
24 was preparing to depart, nearly an hour subsequent to the commence-
25 ment of what all state witnesses described as nearly riotous conditions.
26 (S.O.F. 18:16-18) Thus; the neighborhood was not “within the peace”
27 when Petitioner’s alleged breach was said to have occurred.

28 74. Petitioner herein submits: Following the rationale set forth by the
29 Arizona Court in Cutright, and Matter of Appeal, Petitioner could not

1 have breached the peace of a neighborhood that was not “within the
2 peace” or repose.

3 **B. PETITIONER’S ALLEGED THREATS WERE MADE**
4 **UNDER DURESS.**

5
6 75. In Arizona the Courts must give “...careful consideration of the actual
7 circumstances surrounding the challenged speech...” Citizen Publishing
8 Co. v Miller, 210 Ariz 513, 518.

9 76. Moreover; alleged criminal threats “...(must also) not be the result of
10 mistake, *duress, or coercion*.” In Re Kyle M, 200 Ariz 447, 451 (App)
11 emphasis added, citing Roy v United States, 416 F.2d 874, 866 (9th Cir)
12 and United States v Orozco-Santillan, 903 F.2d 1262, 1265-66 (9th Cir).

13 77. Petitioner was criminally charged for the words he allegedly uttered to
14 Lt. Coleman after Petitioner (1) had endured over an hour of threats
15 like “step out of there you Pussy White Faggot and we’ll take care of
16 you,” (S.O.F. page 23, foot-note 10) (2) had been showered by spit,
17 (S.O.F. 13:15-14:4; 15:10-13; 18:1-3; 24:21-26) and, (3) had taken
18 down his roped barrier and was preparing to depart, when Officer Cuffe
19 testified the violence had “peaked” (S.O.F. 19:1-15)

20 78. Significantly; after Lt. Coleman reviewed the KVOA news tape of
21 Petitioner’s allegedly criminal utterances, which would have docu-
22 mented his exact words, their context, and the duress Petitioner was

1 under, the state declined to subpoena the exculpatory news tape, or
2 present it at trial. (S.O.F. 19:20-20:4)

3 79. Petitioner herein asserts: the extreme duress he endured prior to
4 uttering the challenged speech, as per In Re Kyle, precludes his con-
5 viction for Making Threats and Intimidation.

6 **C. PETITIONER’S CHALLENGED SPEECH FAILED TO**
7 **MEET THE STANDARDS FOR FIGHTING WORDS AND**
8 **THREATS SET FORTH BY THE ARIZONA SUPREME**
9 **COURT.**

10
11 80. In Citizen Publishing the Arizona Supreme Court set forth the
12 following requisite standards for fighting words, incitement and true
13 threats:

14 “In order to qualify as incitement under the Brandenburg test,
15 challenged speech must not only be aimed at producing ‘imminent
16 lawless action’ but must also be ‘likely’ to do so.” Citizen at 518
17 (citing Brandenburg v Ohio, 80 S.Ct. 1827.) “Fighting words must
18 be directed to the person of the hearer.” Citizen at 519. (Citing
19 Cohen v California, 91 S.Ct. 1780.) ‘True threats’ encompass those
20 statements where the speaker means to communicate a serious
21 expression of an intent to commit an act of **unlawful violence** to a
22 particular individual or group of individuals...Thus, as in the case of
23 incitement, the presence of a true threat can be determined only by
24 looking at the challenged statement in context.” Citizen at 520
25 (citing Virginia v Black, 123 S.Ct. 1536 emphasis added)

26
27 81. In the instant case, according to all state witnesses, Petitioner’s rally
28 had already descended into lawlessness for more than an hour prior to
29 Petitioner issuing the words Lt. Coleman testified resulted in his arrest.

1 (S.O.F. 18:16-19). Thus Petitioner’s words were not “likely” to produce
2 “imminent lawless action.”

3 82. Moreover: fighting words “must be directed to the person of the
4 hearer.” (Citizen at 519) Lt. Coleman testified that Petitioner’s words
5 were directed to Lt. Coleman, not the angry crowd. (S.O.F. 19:16-20)

6 83. And finally: As Lt. Coleman testified, TPD’s fear of escalating vio-
7 lence (S.O.F. 17:20-24; 18:8-11) from an angry mob of student radicals
8 which opposed Petitioner’s political message (S.O.F. 12:3-11; 14:11-
9 18; 16:17-19) deterred them from maintaining any semblance of public
10 order, thus resulting in a near riot which compelled Petitioner to issue
11 conditional words of warning.

12 84. A diligent search of the appropriate case law set forth by the Arizona
13 Supreme Court, the Ninth Circuit Court of Appeals and the United
14 States Supreme Court fails to reveal any case law or rationale which
15 suggests a public speaker must retreat from the assaults of angry
16 counter-protestors or otherwise waive his right to issue words of con-
17 ditional warning in self protection in the face of the threat of imminent
18 physical attack.

19 **D. THE POLICE INTENTIONALLY AVOIDED THEIR DUTY**
20 **TO PROTECT PETITIONER.**

1 85. Ever since the civil rights era, the United States Supreme Court has
2 recognized the inherent power (if not the outright inclination) of local
3 authorities to apply Disturbing the Peace statutes to stop political
4 opposition and stop the speech of the so-called “controversial speaker”
5 who challenges the rectitude of official action:

6 “This is the fourth time in little more than four years that this court
7 has reviewed convictions by the Louisiana court for alleged
8 violations, in a civil rights context, of that State’s breach of the
9 peace statute.” Brown v Louisiana, 86 S.Ct. 719

10
11 86. Regarding TPD’s duty to protect the “controversial” public speaker
12 from a hostile crowd, the Federal Courts have stated:

13 “Even where the audience is so offended by the ideas being ex-
14 pressed that it becomes disorderly and attempts to silence the
15 speaker, it is the duty of the police to attempt to protect the speaker,
16 not to silence his speech.” Collin v Smith, 447 F.Supp. 676, 678,
17 690 citing Gooding v Wilson, 92 S.Ct. 1103, Gregory v City of
18 Chicago, 89 S.Ct. 946, 949, 950, 952, 956 and Cox v Louisiana, 85
19 S.Ct. 453 (emphasis added.)

20
21 87. Unlike the instant case where TPD officers “smiled” at Petitioner’s
22 discomfort (S.O.F. 22:20-22) and refused to help when he pleaded for
23 protection (S.O.F. 16: 11-16), the Gregory Court stated:

24 “...the record shows a determined effort by the police to allow the
25 marchers to peacefully demonstrate and at the same time maintain
26 order...(Gregory at 949) ‘It is only where there is an imminent
27 threat of violence, **the police have made all reasonable efforts to**
28 **protect the demonstrators**, the police have requested the
29 demonstration be stopped and explained the request...that an arrest
30 for an otherwise lawful demonstration may be made.” Gregory at

1 952, citing the Illinois Supreme Court. (Emphasis added, internal
2 citations omitted.)

3
4 88. In the instant case Petitioner was arrested even though he complied
5 with the police request to end the demonstration. (S.O.F. 18: 12-19)

6 89. Moreover; when you review the content of the Affidavit of Kathy
7 McKee (Exhibit One), the trial testimony of Officer Cuffe who testified
8 that “collectively” TPD officers decided not to protect Petitioner even
9 though an angry crowd was spitting on him (S.O.F. 15:10-13) and Lt.
10 Coleman who testified he did not cite or otherwise deter “Pro-Raza
11 Open Border” activists from spitting on Petitioner because he feared
12 such action might incite them to acts of even greater violence (S.O.F.
13 17:20-24; 18:8-11), it is abundantly clear that TPD officers, as a matter
14 of policy, intentionally avoided their duty to protect Petitioner as set
15 forth by the U.S. Supreme Court in Gregory, thus requiring the Peti-
16 tioner to engage in defensive gesture and issue stern words of warning
17 in order to protect himself and public safety.

18 90. In Terminiello v. City of Chicago, 69 S.Ct. 894 (1949), the seminal
19 case regarding the use of disturbing the peace ordinances to regulate the
20 political activities of controversial speakers, a violent crowd gathered
21 outside an auditorium while 800 people inside heard Father Terminiello
22 “condemn the conduct of the crowd outside and vigorously if not

1 viciously criticize various political and racial groups whose activities
2 he denounced as inimical to the nation's welfare." Terminiello at 895.

3 91. Loud speakers aroused the outside crowd, conveying such sentiments
4 as "God damned Fascists, Nazis, Communists...kill the Jews, Niggers
5 and Catholics...if we don't kill them they will kill us first," etc., and
6 other rubbish, while the crowd, now "a surging, howling mob of
7 1,500...hurling epithets, breaking windows, throwing ice picks, brick-
8 bats, rocks, bottles, stink bombs" etc., engaged the over matched
9 police who were unable to preserve order. Terminiello at 900-901.

10 92. Terminiello was convicted of breach of the peace. The Terminiello
11 Court, in overturning his conviction, stated the following:

12 "The vitality of civil and political institutions in our society
13 depends on free discussion...It is only through free debate, and
14 the free exchange of ideas that the government remains responsive
15 to the will of the people. (A) function of free speech under our
16 system of government is to invite dispute. It may indeed best
17 serve its high purpose when it induces a condition of unrest,
18 creates dissatisfaction with conditions as they are, or even stirs
19 people to anger. Speech is often provocative and challenging. It
20 may strike at prejudices and preconditions and have profound
21 unsettling effects as it presses for acceptance of an idea. That's
22 why freedom of speech...is protected against censorship or
23 punishment, unless shown likely to produce a clear and present
24 danger of a serious substantive evil that rises far above public
25 inconvenience, annoyance or unrest." Terminiello at 895-896
26

CONCLUSION

93. To borrow a phrase from U.S. Supreme Court Justice Black, this
Petition “tests the ability of the United States to keep the promises its
Constitution makes to the people of the Nation.” Gregory at 948.

94. “Those who make peaceful revolution impossible will make violent
revolution inevitable.” John F. Kennedy, in a speech at the White
House, 1962.

95. Moreover; in the modern police state...

“the greatest evil is not done in those sordid dens of evil Dickens
loved to paint (or in the dank cellars of the Lubyanka by thugs
named Beria), but...in clear, carpeted, warmed, well lighted
offices, by quiet men with white collars and cut fingernails and
smooth shaven cheeks who do not need to raise their voices.” --
C.S. Lewis

96. Regarding the Respondent Tucson City Court Judges’ application of
Arizona’s Disturbing the Peace and Making Threats and Intimidation
Statutes: Petitioner submits this Petition’s Statement of Facts illustrates
a textbook example of the classic conflict between local government,
which has the ability to use all the functions of government apparatus
including the police and the local courts to maintain its’ power and the

1 status quo,¹⁴ and the so-called “controversial” public speaker who dares
2 to use a public forum to challenge the rectitude of official action.

3 97. “There is no crueler tyranny that which is expressed under color of law
4 and with the color of justice.” US v Jannotti, 673 F. 2d 578, 614.

5 98. In this case there is no room for ambiguity or obfuscation. The facts
6 and the law which supports Petitioner’s cause could not be more clearly
7 stated.

8 99. Petitioner submits: the Courts have upheld the rights of jack-booted
9 Nazi thugs to march in the streets of Skokie (Nat. Socialist Party of
10 America v Village of Skokie, 97 S.Ct. 2205), the Ku Klux Klan to
11 march in opposition to Martin Luther King Day (Forsyth County, Ga. v
12 Nationalist Movement, 112 S.Ct. 2395, 2399), pornographers to express
13 their viewpoints (Hustler v Falwell, 485 U.S. 46), and Motorcycle
14 Outlaws to wear gang regalia in the corridors of the U.S. District Court
15 (Sammartano v First Judicial District Court, 303 F.3d 959 9th Cir 2002),
16 all with the same underlying rationale: “If we don’t protect the
17 expressive rights of these people, the day will come when the govern-

¹⁴ Petitioner submits: regarding political protest, the conduct of TPD and the Tucson Municipal Court bears uncanny resemblance to the activities of the ‘good ole boy’, tobacco chawing, redneck racist hicks who occupied positions of power in the American south in the civil rights era.

ment will step in and take away our right to criticize the policies of government.”

100. Petitioner, who respectfully submits that day of the modern police state has already come to Tucson City and Pima County Arizona, herein expresses his prayer that this Court will protect his rights now.

PRA YER

Petitioner herein prays the Court to:

- a. Vacate the Order of the Court which prevents Petitioner from “speak-(ing) within 1000 ft. of any demonstration.”
- b. Vacate Petitioner’s convictions for violations of A.R.S.13-2904 and A.R.S. 13-1202 and enter a determination of “Not Guilty.”
- c. Or, in the alternative, on the basis of Respondent Judge Hays’ refusal to allow Petitioner to introduce evidence of Tucson City policy to stop the demonstrations of “Anti-Raza Close Border” activists, to Remand the matter back to Tucson Municipal Court for retrial.
- d. Provide such additional relief the Court deems proper.

RESPECTFULLY SUBMITTED this 01st day of October 2009.

BY

Roy Warden, Petitioner

103 E. Alameda Street • P.O. Box 27210 • Tucson, AZ 85725-7210 • Phone (520) 791-4216

[illegible]

PROBATION	36	TOTAL MONTHS	24	MONTHS OF UNSUPERVISED AND	12	MONTHS OF MONITORED PROBATION
-----------	----	--------------	----	----------------------------	----	-------------------------------

CONDITIONS: ☐ REPORT TO PROBATION OFFICE ☐ TODAY WITHIN ☐ HOURS OF JAIL RELEASE

☒ VIOLATE NO LAWS ☐ HAVE NO CONTACT WITH

☐ STAY AWAY FROM

	OBTAIN PROOF OF
--	-----------------

☒ OTHER: Possess no firearm. Anger counseling through probation. Do not speak w/in 1000ft of any public demonstration.

PROOFS:	DRIVERS LICENSE	VEHICLE REGISTRATION	6 MONTHS PAID INSURANCE	REPAIR	DOG LICENSE
---------	-----------------	----------------------	-------------------------	--------	-------------

☐ OTHER

BY

OR

FINE **\$500.00** TODAY, OR THROUGH SENTENCE ENFORCEMENT OFFICE ☒ TIME PAYMENT FEE OF **\$20.00**

<input type="checkbox"/>	INSTALLMENTS	Fine or C/S through probation	<input checked="" type="checkbox"/>	COMMUNITY SERVICE	50	HOURS, PROOF
--------------------------	--------------	-------------------------------	-------------------------------------	-------------------	----	--------------

ADMINISTRATIVE FEES	<input type="checkbox"/>	WAIVED	<input type="checkbox"/>	FOR COST OF APPOINTED COUNSEL
---------------------	--------------------------	--------	--------------------------	-------------------------------

DUI PROCESSING FEES = JAIL X = TO \$0.00

RESTITUTION IN AMOUNT OF

TO

INSTALLMENTS

<input checked="" type="checkbox"/> JAIL	TIME SERVED	DAYS WITH CREDIT FOR	DAY ALREADY SERVED
--	-------------	----------------------	--------------------

(REFERENCED COMMITMENT ORDER ATTACHED)

x	SUSPEND	90	DAYS
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☐ BOND ☒ ~~CONVERT TO FINE~~ ☐ REFUND ☐ EXONERATE TO SURETY

I AGREE TO THE CONDITIONS OF PROBATION

I have received a copy of this Minute Entry and Notice of Appeal

Defendant

DOE

Address

ZIP

☐ QUASH WARRANT☐ SET ASIDE CIVIL DEFAULT

I certify that the defendant's finger print was affixed on the reverse side of this document upon acceptance of this plea.

~~MITCHELL EISENBERG~~
JUDGE

Mar 16, 2009
DATE

☒ FILE ☒ DEFENDANT ☒ PROSECUTOR ☐ PROBATION ☐ OTHER

(RevSL6/01)

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1. This document was prepared in Microsoft Word, using a double line spaced, proportionally spaced typeface, **14 Point Times New Roman**.
2. The total number of words used, except those excluded as provided by Ariz. R. Crim. P. Rule 31.12 and 31.13, is **7,948**.

RESPECTFULLY SUBMITTED this 01st day of October 2009.

BY

Roy Warden, Petitioner

1 **CERTIFICATE OF E-MAIL SERVICE**
2
3

4 I Roy Warden, Petitioner in Warden v. Tucson Municipal Court
5 Judges Eugene Hays and Mitchell Eisenberg, and State of Arizona as Real
6 Party in Interest, Action #2CA-SA2009-0076, do herein Declare, Swear and
7 Affirm as follows:

8 On October 01, 2009 via email, I served upon the parties named above
9 my Petition for Special Action and Appendix, my Motion to Expand the
10 Record and my Request for Oral Argument addressed to the following
11 recipient:

12 Dianne Cotter
13 Supervisor/Administrator
14 Tucson City Court
15 (520) 791-4189
16 courtweb@tucsonaz.gov
17
18
19

20 _____
21 Roy Warden
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